No. 79-1380

AUG 15 1980

MICHAEL RODAK, JR., C

In the Supreme Court of the United States

OCTOBER TERM, 1979

PATRICIA R. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES, APPELLANT

v.

CHARLES EDWARD WILSON, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JOINT APPENDIX

JURISDICTIONAL STATEMENT DOCKETED MARCH 7, 1980

PROBABLE JURISDICTION NOTED MAY 27, 1980

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CIVIL DOCKET UNITED STATES DISTRICT COURT

CHARLES EDWARD WILSON,
MICHAEL IRENE WELCH, individually and on behalf of all others similarly situated,

Plaintiffs

v

JOEL EDELMAN, Director of the Illinois Department of Public Welfare, and
CASPER WEINBERGER, Secretary of the Department of Health, Education, and Welfare,

Defendants

12-5-73	Filed complaint for Declaratory Judgment and Injunctive Relief and six copies. JS-5
12-5-73	Filed Designation.
12-5-73	Filed Affidavit under Rule 39.
12-5-73	Filed Motion to Proceed in Forma Pauperis.
12-5-73	Leave granted to file complaint in forma pauperis. MC MILLEN, J. Notices mailed 12-12-73
12-5-73	Issued summons and five copies with five copies of complaint.
12-13-73	Filed summons returned served as to Casper Weinberger, Joel Edelman, and U.S. Attorney. (3 services)
2-5-74	Filed Governments notice of motion with motion for an extension of time, attached.
2-6-74	Enter order; Governments motion for an extension of time to answer or otherwise plead from February 12, 1974 to and including March 18, 1974 granted. Marshall, J-DRAFT Mailed notices 2-7-74.

2-19-74	It is ordered that a preliminary pretrial conference is scheduled for March 21, 1974 at 9:30 a.m. in chambers of Judge Marshall Room 2178. Marshall, J Mailed notices 2-20-74.
2-19-74	Filed appearance of Joel Edelman as defendant and that of William J. Scott as his attorney.
2-19-74	Filed Defendants notice of filing.
2-19-74	Filed Defendant Edelman's motion to dismiss.
2-22-74	Filed Defendant Edelman's notice of motion.
2-22-74	Filed Defendant Edelman's motion for leave to file response to complaint, instanter,
2-22-74	Motion for leave to file instanter and motion to dismiss, granted to defendants motion to file instanter answer to the complaint Motion to dismiss taken under Rule 13, F.R.C.P. Marshall, J Mailed notices 2-25-74.
2-27-74	Filed plaintiffs motion to convene a three judge court and memorandum in support of said motion.
3-18-74	Filed answer to complaint of defendant, Casper Weinberger, Secretary Dept. of Health, Education and Welfare for declaratory judgment and injunctive relief.
3-18-74	Filed Amended complaint for declaratory judgment and injunctive relief.
3-21-74	Filed Plaintiffs statement of the case.
3-21-74	Pretrial conference held attended by counsel for all parties. Plaintiffs granted leave nunc pro tunc March 18, 1974 to file their Amended Complaint. Defendants granted 30 days to

	respond to Amended complaint and plaintiffs motion to convene 3 judge court. Plaintiff granted 7 days to reply cause set for further pre-trial conference May 21, 1974 at 9 A.M.—Marshall, J Mailed notices 3-22-74
4-19-74	Filed defendant Edelmans notice of motion with first amended motion to dismiss attached: memorandum in support.
**3-21-74	Filed Plaintiff's request to admit.
4-22-74	Filed defendants notice of filing.
4-22-74	Filed defendants Answer to the Request to Admit.
4-29-74	Plaintiffs motion to take motion to convene three judge court under advisement. Court to take motion under advisement. Marshall, J Mailed notices 4-30, 1974.
5-3-74	Filed defendant Caspars Weinbergers Answer to the Amended Complaint for Declaratory and Injunctive Relief.
5-9-74	Filed plaintiffs' request to produce.
5-21-74	Pretrial conference held. Attended by counsel for all parties; The court announces that it intends to convene a three-judge court pursuant to 28 U.S.C. 2281 and 2282, opinion to follow; All defendants ordered to produce records regarding named plaintiffs by June 11, 1974 plaintiffs to file motions for summary judgment by June 25, 1974 defendants to respond and present any cross-motions summary judgment by July 16, 1974; a plaintiffs to reply by July 30, 1974. Defendant Edelmans motion to dismiss taken under advisement by three-judge court. Marshall, J Mailed notices 5-23-74.

6-28-74	Filed plaintiffs motion for extension of time for filing motion for summary judgment.
7-1-4	Enter order dated June 28, 1974: Enter order Plaintiffs motion for summary judgment to be filed by July 12, 1974. Defendants to respond and present any cross motions for summary judgment by August 5, 1974/and plaintiffs reply by August 19, 1974. Marshall, J Mailed notices 7-1-74.
7-12-74	Filed plaintiffs motion for leave to proceed as a class and for summary judgment (with 2 copies)
7-17-74	Filed corrections to memorandum in support of plaintiffs motions for summary judgment, etc. with two copies.
8-5-74	Filed defendants notice of filing with memorandum in opposition to plaintiffs motion for summary judgment attached.
8-7-74	Filed defendants notice of motion.
8-7-74	Filed defendants motion for leave to file instanter—motion to dismiss and for summary judgment and memorandum of law in support of action.
8-8-74	Enter order dated August 7, 1974: Governments motion of defendant Caspar Weinberger for leave to file instanter his (1) motion to dismiss or for summary judgment and (2) Memorandum of law in support thereof is entered and continued to September 12, 1974 at 10:00 a.m. before Judge Marshall, Lynch, J Mailed notices 8-8-74.
8-14-74	Filed Plaintiff's notice with motion for additional time to file reply brief attached.
8-15-74	Enter order dated August 14, 1974: Enter Order on motion for additional time to file

	reply brief to September 6, 1974, granted. Lynch J. Mailed notices 8-15-74.
9-6-74	Filed Reply memorandum of the plaintiffs on cross-motions of summary judgment and defendants motions to dismiss.
9-13-74	Enter order dated September 12, 1974: Government given to and including September 23, 1974 to file reply to pending motions. Marshall, J Mailed notices 9-13-74.
9-25-74	Filed defendants notice of filing.
9-25-74	Filed defendants motion to file its reply memorandum which exceeds pages, instaner.
9-25-74	Filed defendants reply memorandum.
9-26-74	Enter order dated September 25, 1974: Order governments motion to file its reply memorandum which exceeds 15 pages, instanter and governments memorandum, granted. Marshall, J Mailed notices 9-26-74.
10-7-74	Enter order dated October 7, 1974: Enter order granting plaintiffs leave to file supplemental memorandum instanter. Marovitz, J Mailed notices 10-8-74.
10-7-74	Enter order dated October 7, 1974: Order plaintiffs motion to file supplemental memorandum instanter, granted. Marshall, J Mailed notices 10-9-74.
10-7-74	Filed plaintiffs motion; supplemental memorandum.
10-17-74	Enter order dated October 16, 1974: Plaintiffs motion to convene a three judge court is granted. Marshall, J—DRAFT Mailed notices 10-16-74.

11-29-74	Enter order dated November 25, 1974: It is hereby ORDERED that this cause is reassigned to the Calendar of the Honorable Thomas R. McMillen, Robson—for the executive committee. Mailed notices 11-29-74.
12-19-74	Filed designation of three judge court designating Wilbur F. Pell, Prentice Marshall, and Thomas R. Millen, Judges.
5-20-75	Enter order dated May 19, 1975: Oral argument will be held in the three above cases on Friday, June 27, 1975 at 2:00 p.m. in Judge McMillen's courtroom. A maximum of 45 minutes to each side will be allowed, and the attorneys for each side are requested to divide their time between the three cases as they see fit. Counsel may submit additional citation of authorities in writing not later than one week prior to the oral argument, if this is necessary to advise the court of new or overlooked decisions. However, additional briefing is not authorized, and the court will receive the citations in letter form, without argument or discussion. McMillen, J. Notices mailed 5-20-75. (in 73 C 2337)
7-2-75	Enter order dated June 27, 1975: Oral arguments heard, cause taken under advisement. Pell, CJ; Marshall, J., McMillen, J. Notices mailed 7-2-75. (in 73 C 2337)
8-5-75	Filed plaintiffs motion to alter definition of proposed class.
8-25-75	Filed defendant's notice of filing.
8-25-75	Filed defendant's motion to strike plaintiffs' motion to alter definition of the proposed class.

8-25-75	Filed Federal Defendant's supplemental memorandum in opposition to plaintiffs' motion to alter the class, and requesting dissolution of the Three Judge Court.
9-18-75	Enter order dated 9-17-75: Enter three-judge decision that the motion of the defendants to dismiss all three complaints in the cases at bar should be granted (Draft) PELL, J. MARSHALL, J McMILLEN, J. Mailed Notices 9-18-75 (JS6)
10-15-75	Filed plaintiffs' notice of appeal. (No Fee)
10-15-75	Transmitted copy of notice of appeal and copy of docket entries to U.S.C.A.—7th Circuit.
10-16-75	Mailed letter and copy of docket entries to James D. Weill, 343 S. Dearborn St. and Thomas Grippando, 64 E. Jackson and mailed copy of notice of appeal and copy of letter to William J. Scott and transmitted copy of notice of appeal and letter to U.S. Attorney.
11-6-75	Filed defendant Joel Edelman's notice; motion to dismiss appeal.
11-4-75	Filed certified copy of order from the U.S.C.A.—7th Circuit dated November 3, 1975 re: record to be filed in the Court of Appeals on or before November 12, 1975; complete record. (filed in 73 C 2337)
11-10-75	Certified and transmitted the complete record on appeal to the USCA, 7th Circuit consisting of one volume of pleadings.
11-10-75	Mailed copy of letter, list of documents and certificate to Thomas Grippando, James Weill, U.S. Attorney and William J. Scott.
7-7-76	Certified and transmitted supplemental record to U.S.C.A. 7th Circuit consisting

	of copy of supplemental memorandum of Federal Defendants filed on August 25, 1975.
10-20-76	Filed opinion. (IN 73 C 2337) JS-5
10-20-76	Filed certified copy of Order from U.S.C.A. 7th Circuit dated September 28, 1976 that the judgment of the U.S. District Court is Reversed In Part and Dismissed in Part. (IN 73 C 2337)
10-20-76	Received complete record from the U.S.C.A. 7th Circuit consisting of 1 volume pleadings.
2-18-77	Filed certified copy of amended judgment from U.S.C.A.: It is ordered and adjudged that judgment in these causes appealed from be, and the same is hereby reversed in part, dismissed in part and remanded to a single judge district court pursuant to Circuit Rule 18, in accordance with the opinion of this Court filed this date.
2-18-77	Mailed letter re District Courts General Rule 44 to attorneys of record.
3-16-77	Enter order dated 3-11-77: It appearing that this cause is related to 73 C 2337 which was remanded from the Court of Appeals with this cause; and it further appearing that that cause was reassigned to the Honorable Joel M. Flaum; IT IS HEREBY ORDERED that this case be reassigned to the Honorable Joel M. Flaum.—FOR THE EXECUTIVE COMMITTEE, Parson, CJ Mailed notices 3-16-77 (REASSIGNED TO JUDGE FLAUM)
3-18-77	Enter order dated 3-17-77: On the court's own motion cause set for status report on

	March 30, 1977 at 10:00 a.m.—Flaum, J Mailed notices 3-18-77
3-31-77	Enter order dated 3-30-77: Status heard. Cause continued for further report on status to April 20, 1977 at 10:00 a.m. The court directs that any supplemental briefs in support of counsel's renewed motions for summary judgment shall be filed by that date. Flaum, J Mailed notices 3-31-77
4-20-77	Filed plaintiffs' notice of motion; motion for extension of time to file supplemental memorandum.
4-25-77	Enter order dated 4-20-77: Status heard. Cause continued for further report on status to May 2, 1977 at 10:00 a.m.—Flaum, J Mailed notices 4-26-77
4-26-77	Enter order dated 4-20-77: Status heard. Cause continued for further report on status to May 2, 1977 at 10:00 a.m.—Flaum, J Mailed notices 4-27-77
5-17-77	Enter order dated 5-13-77: Government granted leave to proceed on the previously filed district court briefs on the renewed motions for summary judgment. Plaintiffs are given fifteen days to file their supplemental memorandum and the government is given ten days to respond. Ruling to be made by mail.—Flaum, J Mailed notices 5-17-77
5-27-77	Filed plaintiff's Motion for Certification of Class.
5-27-77	Filed plaintiff's Motion for Summary Judgment.
5-27-77	Filed Plaintiffs' Memorandum on Remand from Court of Appeals.

6-10-77	Filed federal defendants' Notice.
6-10-77	Filed Motion for leave to file Memorandum.
6-10-77	Filed Defendant's Memorandum on Remand.
6-13-77	Enter order dated June 10, 1977: Federal defendants granted leave to file memorandum, instanter.—Flaum, J Notices mailed 6-13-77
6-27-77	Enter order dated June 16, 1977 TRANSFER OF CASE TO THE EXECUTIVE COMMITTEE FOR REASSIGNMENT. The above-captioned cause is currently pending on my calendar. I recommend to the Executive Committee that this case be reassigned by lot to another judge of this Court. The reasons for my recommendations are indicated on the reverse of this form. Joal M. Flaum, Judge. (b) Order of the Executive Committee. It is hereby ordered that the Clerk of the Court reassign the above-captioned cause by lot to the calendar of an individual judge of this Court in accordance with the Rules. Enter: For the Executive Committee James B. Parsons Chief Judge 6-20-77. (JUDGE WILL). Notices mailed 6-27-77
9-29-77	Enter order dated September 28, 1977. On Court's own motion order cause for October 7, 1977 for report on status. Will, J Notices mailed 9-29-77
10-12-77	Enter order dated October 7, 1977: Order cause set for November 18, 1977 for ruling on pending motions. Will, J. Notices mailed 10-12-77

11-3-77	Order cause reassigned to JUDGE BUA (DRAFT)—The Executive Committee
11-29-77	Enter order dated November 28, 1977: Cause having been reassigned to the calendar of Judge Bua, status hearing is set for December 23, 1977 at 2:30 p.m.—Bua, J Notices mailed 11-29-77
12-27-77	Enter order dated December 23, 1977: Status hearing held. Court will rule by mail on pending motions for summary judgment and to certify class.—Bua, J Notices mailed 12-27-77
5-17-79	Enter order dated 5-16-79: Both parties are hereby directed to file supplemental briefs, simultaneously on or before May 31, 1979. Bua, J Notices mailed 5-17-79
6-1-79	Filed 5-30-79 Defendant's Supplemental Memorandum on Remand from Court of Appeals.
6-4-79	Filed 5-31-79 Plaintiffs' Supplemental Memorandum on Remand.
6-4-79	Filed 5-31-79 Excerpts from Plaintiffs' Brief in the 7th Circuit Court of Appeals.
10-12-79	Enter order dated 10-10-79: Plaintiffs' Motion for Class Certification is granted. The class shall consist of: all persons residing in HEW Region V who have been terminated from benefits under Title XVI, or who have applied for Supplemental Security Income benefits under Title XVI and have been denied such benefits, on or after January 1, 1974, solely because they are between the ages of 21 and 65 and hospitalized in a public mental institution.—Bua, J. Notices mailed 10-12-79

10-15-79	Enter order dated 10-10-79: The WILSON plaintiffs' (73 C 3070) motion for summary judgment is granted. The defendant shall begin payments under the Act to all eligible inmates of public mental health institutions. The STERLING defendants' motion (73 C 2337) for summary judgment is granted; the exclusion of pretrial detainees from SSI benefits is sustained, and the STERLING action is dismissed (DRAFT).—Bua, J. Notices mailed 10-15-79
10-22-79	Filed 10-19-79 Plaintiff's Notice of Filing; Motion for Entry of Final Judgment Order or Alternatively to Alter or Amend the Judgment.
11-6-79	Enter order dated 11-5-79: Defendant to file answer to plaintiff's motion for entry of final judgment order or alternatively to alter or amend the judgment by or on 11-15-79. Plaintiffs' reply to be filed by or on 11-23-79. Court will rule by mail.—Bua, J. Notices mailed 11-6-79
11-8-79	Filed 11-8-79 Defendant's Notice of Appeal to the U.S. Supreme Court from the memorandum and order entered Oct. 10, 1979.
11-8-79	Mailed copy of Notice of Appeal to Opposing Counsel, James D. Weill, Legal Assistance Foundation, 343 S. Dearborn, Chicago, ILL 60604.
11-19-79	Filed 11-16-79 Government's Notice.
11-19-79	Filed 11-16-79 Motion to Extend Time.
11-19-79	Enter order dated 11-16-79 Defendant granted an extension of time within which to file answer to plaintiff's motion for entry of final judgment to and including

	11-26-79.—Bua, J. Notices mailed 11-19-79
11-30-79	Filed 11-29-79 Defendant's Notice.
11-30-79	Filed 11-29-79 Motion for Leave to File Instanter.
11-30-79	Filed 11-29-79 Defendant's Memorandum in Opposition to Plaintiff's Motion for Entry of Final Judgment Order or Alternatively to Alter or Amend the Judgment.
11-30-79	Enter order dated 11-29-79. Defendant given leave to file memorandum in opposition to motion for entry of final judgment instanter. Parties represent to the court that they will present a stipulated order within 2 weeks.—Bua, J Notices mailed 11-30-79
12-19-79	Filed 12-18-79 Plaintiffs' Notice of Motion; Motion for Entry of Judgment.
12-19-79	Enter order dated 12-18-79: Enter judgment in favor of plaintiffs (DRAFT).—Bua, J. JS-6 Notices mailed 12-19-79

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHARLES EDWARD WILSON, MICHAEL IRENE WELCH, MAUDIE SIMMONS, JAMES ARMSTRONG, BOMER JOHNSON, SAMUEL BIRDSELL, DONALD CLARK, JOHN KIERAN TURNEY, individually and on behalf of all others similarly, situated, PLAINTIFFS,

v.

JOEL EDELMAN, Director of the Illinois Department of Public Aid, and CASPAR WEINBERGER, Secretary of the Department of Health, Education and Welfare, DEFENDANTS.

NO: 73 C 3070

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COUNT I

1. This is an action for declaratory and injunctive relief against JOEL EDELMAN, Director of the Illinois Department of Public Aid, authorized by 42 U.S.C. §1983 and 28 U.S.C. §2201, 2202 to secure rights, privileges and immunities established by the Constitution and laws of the United States. Plaintiffs bring this action individually and on behalf of all other persons who are hospitalized in a mental institution and who are otherwise eligible for public assistance pursuant to Chapter 23, §3-1 *et seq.* of the Illinois Revised Statutes under the program of Aid to the Aged, Blind and Disabled, but are denied said assistance solely because of their hospitalization in a public mental institution. Plaintiffs challenge the constitutionality of Chapter 23, §3-14 Ill. Rev. Stat. and regulations promul-

aged thereunder which prohibit said assistance to persons hospitalized in mental hospitals.

2. Jurisdiction is conferred upon the Court by 28 U.S.C. §1343(3) and (4) providing for jurisdiction of suits authorized by 42 U.S.C. §1983, and by 28 U.S.C. §1331 in that the amount in controversy exceeds $10,000, exclusive of interest and costs.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §2281, since plaintiffs seek an injunction to restrain the defendant EDELMAN who is a state officer from the enforcement, operation, and execution of a state statute and regulation of statewide applicability on the ground that said statute and regulation are contrary to the Constitution of the United States.

4. Plaintiffs are all citizens of the United States and residents of the State of Illinois, County of Cook:

a. Plaintiff Charles Wilson was admitted to Elgin Mental Health Center in October, 1973.

b. Plaintiff Michael Irene Welch was formerly a recipient of disability assistance until her admission to the Chicago Read Mental Health Center in October, 1973. The admission of plaintiff Welch in October, 1973, was the third time she had been admitted to a public mental hospital. Plaintiff Welch was released from the Chicago Read Mental Health Center in January, 1974.

c. Plaintiff Maudie Simmons was formerly a recipient of public assistance until her admission to Chicago Read Mental Health Center on February 27, 1974.

d. Plaintiff James Armstrong was formerly a recipient of disability assistance until his admission to Chicago Read Mental Health Center on October 15, 1973.

e. Plaintiff Bomer Johnson was formerly a recipient of disability assistance until his admission to Chicago Read Mental Health Center on November 16, 1973.

f. Plaintiff Samuel Birdsell was formerly a recipient of disability assistance until his admission to Chicago Read Mental Health Center on December 11, 1973.

g. Plaintiff Donald Clark was formerly a recipient of disability assistance until his admission to Chicago Read Mental Health Center on January 1, 1974.

h. Plaintiff John Kieran Turney was formerly a recipient of disability assistance until his admission to Chicago Read Mental Health Center in January, 1974.

5. The defendant, JOEL EDELMAN, is Director of the Illinois Department of Public Aid and is charged with the state-wide administration of the public assistance programs and with establishing regulations to carry out the statutory provisions with respect to those programs. He is sued in his individual capacity and as Director of the Illinois Department of Public Aid.

6. Chapter 23, §3-1.4 Illinois Revised Statutes provides that inmates of municipal, country, state or national institutions for the mentally ill are not entitled to disability assistance while they are patients in the institituion. Illinois Department of Public Aid Categorical Assistance Manual §IV-10-8 provides that persons in state institutions are not eligible for public assistance.

7. The named plaintiffs bring this action individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons in Illinois who are otherwise eligible for Aid to the Disabled pursuant to Chapter 23, §3-1 *et seq.*, Ill. Rev. Stat., but are denied such assistance because they are hospitalized in a public mental institution. The class is so numerous as to make joinder impracticable; there are questions of law presented herein which are common to the entire class of persons represented by plaintiffs herein; plaintiffs' claims as hereinafter set forth are typical of the claims of all of the members of the class; and plaintiffs are qualified to, and will fairly and adequately protect the interests of each and all of the members of the class. In addition, the defendant has acted or refused to act on grounds generally applicable to the class as a whole, and final declaratory and injunctive relief with respect to the class as a whole is therefore appropriate.

8. Plaintiffs are adults who have been and are disabled because of their mental conditions. Although plaintiffs have voluntarily hospitalized themselves or have been ordered to be involuntarily hospitalized for indefinite periods of time by the Circuit Court of Cook County, none of the plaintiffs have been found incompetent.

9. Plaintiffs, because of their mental conditions, have been and are hospitalized in public mental institutions operated by the Illinois Department of Mental Health.

10. Plaintiffs WELCH, SIMMONS, ARMSTRONG, JOHNSON, BIRDSELL, CLARK and TURNEY were receiving disability assistance from the Illinois Department of Public Aid, pursuant to Chapter 23, §3-1 *et seq.*, Ill. Rev. Stat. and Title XVI of the Social Security Act, 42 U.S.C. §1381 *et seq.*, until they were hospitalized in Chicago Read Mental Health Center, an inpatient facility of the Illinois Department of Mental Health. They would have continued to be eligible for such assistance but for the discrimination complained of herein.

11. At the time of their hospitalizations, during the months of October, 1973, through February, 1974, defendant EDELMAN terminated their disability assistance, due solely to the hospitalizations. In some instances this termination was effected without prior notice and hearing.

12. Plaintiff WILSON was not receiving disability assistance prior to his hospitalization in Elgin Mental Health Center, but would have been and would be eligible for disability assistance but for the discrimination complained of herein.

13. Plaintiffs are unable to earn money in the mental institutions and are indigent.

14. Disability assistance recipients receive not only assistance grants for food and shelter, but also grants for other basic needs, including clothing, transportation and personal essentials.

15. The Department of Mental Health permits those who are hospitalized to wear their own clothing. Those

who do not have their own clothing are issued hospital gowns or clothing which is often used and illfitting.

16. Those plaintiffs formerly receiving assistance received money for clothing in their assistance grants.

17. Plaintiffs would currently be eligible for grants for clothing, but for the discrimination complained of herein. Because plaintiffs cannot obtain assistance and are indigent, as their clothing wears out they will be unable to purchase clothing and must wear hospital-issued clothing.

18. Those plaintiffs formerly receiving assistance received money for personal essentials in their assistance grants.

19. Plaintiffs would currently be eligible to receive grants for personal essentials such as stationery, stamps, newspapers, books, magazines and personal care items, but for the discrimination complained of herein. The Department of Mental Health does not provide such items to inmates and plaintiffs, because they cannot obtain assistance and are indigent, are unable to purchase such items.

20. Those plaintiffs formerly receiving assistance received money for transportation costs in their assistance grants.

21. Plaintiffs would currently be eligible to receive grants for transportation but for the discrimination complained of herein. Although the Department of Mental Health provides patients with passes to visit friends and relatives outside of the institution, it does not provide inmates with carfare for such visits. Plaintiffs, because they cannot obtain assistance and are indigent, are unable to use passes for outside visits.

22. Because plaintiffs and those similarly situated have been and continue to be denied financial assistance under the Aid to the Disabled program, they will continue to suffer irreparable injury, loss and damage through the lack of adequate funds to purchase those necessities required for a minimum standard of decency and health, unless the defendants are permanently enjoined from denying them public assistance.

23. Needy disabled persons who in all other ways qualify for aid to the aged, blind or disabled are denied benefits solely because of the fact they are institutionalized in a public mental hospital. Needy persons who are denied benefits are indistinguishable from those who do receive benefits, except for the fact of their hospitalization in a public mental institution.

25. No adequate state justification exists for this arbitrary classification embodied in Chapter 23, §3-1.4 Illinois Revised Statutes or Section IV-10-8 Illinois Department of Public Aid Manual, and the classification hence is invalid under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

26. The denial of aid to the disabled benefits without permitting the inmates to show that their needs are not being met by the institution constitutes a violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

27. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray on behalf of themselves and all others similarly situated that this Honorable Court:

1. Enter a declaratory judgment finding Chapter 23 § 3-1.4, Illinois Revised Statutes, and Section IV-10-8 of the Illinois Department of Public Aid Handbook, insofar as they deny assistance to persons solely because they are institutionalized in a public mental hospital, violative of the Fourteenth Amendment to the United States Constitution.

2. Enjoin the defendant from failing to provide aid to the aged, blind and disabled to those who are otherwise qualified, but who are hospitalized in public mental institutions, to the extent the facility in which they are hospitalized fails to provide all of the basic needs met by the program of Aid to the Aged, Blind or Disabled.

3. Order the defendant to make restitution to the plaintiffs and the members of the class for monies wrongfully denied them.

4. Grant any other relief it deems just and necessary, and grant plaintiffs their costs herein.

COUNT II

1. This Count is an action for declaratory and injunctive relief against CASPAR WEINBERGER, Secretary of the Department of Health, Education and Welfare. Plaintiffs bring this action individually and on behalf of all other persons who are hospitalized in a mental institution and who were otherwise entitled to Aid to the Aged, Blind and Disabled pursuant to Title XVI of the Social Security Act, 42 U.S.C. §1381 *et seq.*, as in effect prior to January 1, 1974, but were denied said assistance solely because of their hospitalization in a public mental hospital. Plaintiffs challenge the constitutionality of 42 U.S.C. §1385(a) and regulations promulgated thereunder which prohibit said assistance to persons hospitalized in mental hospitals.

2. Jurisdiction is conferred upon this Court by 5 U.S.C. §702 *et seq.*, 28 U.S.C. §§1337 and 1361, and 28 U.S.C. §1331 in that the amount in controversy exceeds $10,000, exclusive of interest and costs.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §2282, since plaintiffs seek an injunction to restrain the defendant, who is a federal officer, from the enforcement, operation and execution of a federal statute on the ground that said statute is contrary to the Constitution of the United States.

4. Plaintiffs reallege and incorporate paragraph 4 of Count I as and for paragraph 4 of this Count.

5. The defendant CASPAR WEINBERGER is the Secretary of the Department of Health, Education and Welfare and is charged with the nationwide administration of the program of Aid to the Aged, Blind and Disabled.

6. 42 U.S.C. §1335 as effective prior to January 1, 1974, provided that no person shall be eligible for assistance payments under the program of Aid to the Aged, Blind and Disabled with respect to any month throughout which such person is a patient in a public mental hospital.

7. The named plaintiffs bring this action individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who are otherwise eligible for

Aid to the Aged, Blind or Disabled pursuant to Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, as in effect prior to January 1, 1974, but are denied such assistance because they are hospitalized in a public mental institution. The class is so numerous as to make joinder impracticable; there are questions of law and fact presented herein which are common to the entire class of persons represented by plaintiffs herein; plaintiffs' claims as hereinafter set forth are typical of the claims of all of the members of the class; and plaintiffs are qualified to, and will fairly and adequately protect the interests of each and all of the members of the class. In addition, the defendant has acted or refused to act on grounds generally applicable to the class as a whole, and final declaratory and injunctive relief with respect to the class as a whole is therefore appropriate.

8. Plaintiffs reallege and incorporate paragraphs 8 through 24 of Count I as and for paragraphs 8 through 24 of this Count.

25. No adequate justification exists for the arbitrary classification and the classification is invalid under the Fifth Amendment to the Constitution of the United States in that it denies equal protection rights embodied in the guaranty of due process of law.

26. The denial of Aid to the Aged, Blind and Disabled benefits without permitting inmates to show that their needs are not being met by the institution constitutes a violation of the due process clause of the Fifth Amendment to the United States Constitution.

27. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated, pray that this Honorable Court:

1. Enter a declaratory judgment finding 42 U.S.C. § 1385, insofar as it denies assistance to persons solely because they are hospitalized in public mental institutions, violative of the Fifth Amendment of the United States Constitution.

2. Order the defendant to provide aid for the disabled to those who are otherwise qualified but are hospitalized in public mental institutions.

3. Order defendant to make restitution to the plaintiffs and the members of the class for monies wrongfully denied them.

4. Grant any other relief that it deems just and necessary, and grant plaintiffs their costs herein.

COUNT III

This Count is an action for declaratory and injunctive relief against CASPAR WEINBERGER, Secretary of the Department of Health, Education and Welfare. Plaintiffs bring this action individually and on behalf of all other persons who are hospitalized in a mental institution and who are otherwise entitled because of need to Supplemental Security Income payments of $25 each month pursuant to Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, as effective after January 1, 1974, but who are denied said assistance solely because they are over the age of 21 and under the age of 65 and hospitalized in a public mental hospital. Plaintiffs challenge the constitutionality of 42 U.S.C. § 1382(e)(1)(A) and regulations promulgated thereunder which prohibit said assistance because they are hospitalized in public mental hospitals.

2. Jurisdiction is conferred upon this Court by 5 U.S.C. § 702 *et seq.*, 28 U.S.C. §§ 1337 and 1361, and 28 U.S.C. § 1331 in that the amount in controversy exceeds $10,000, exclusive of interest and costs.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. § 2282, since plaintiffs seek an injunction to restrain the defendant, who is a federal officer, from the enforcement, operation and execution of a federal statute on the ground that said statute is contrary to the Constitution of the United States.

4. Plaintiffs reallege and incorporate paragraph 4 of Count I as and for paragraph 4 of this Count.

5. The defendant CASPAR WEINBERGER is the Secretary of the Department of Health, Education and Welfare and is charged with the nationwide administration of the program of Supplemental Security Income.

6. Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, as effective January 1, 1974, creates a program entitled Supplemental Security Income for the Aged, Blind and Disabled. In large part this program replaces the former Title XVI program, Aid to the Aged, Blind and Disabled.

7. The Supplemental Security Income program, like the predecessor program, provides benefits to those aged, blind and disabled persons who meet a needs test. The program is administered and benefits are paid by the Social Security Administration. There is one level of benefits for eligible persons not residing in institutions, and a second, lower level of benefits for eligible persons residing in institutions.

8. Pursuant to 42 U.S.C. § 1382(e)(1)(A) inmates in public mental institutions who are 65 years of age or older or under 21 years of age (under 22 years of age in the case of an individual who is a patient in the hospital immediately preceding the date on which he attained the age of 21) are, if otherwise eligible, entitled to Supplemental Security Income grants, based on their age or disability, in the amount of $300 per year. Also entitled to such benefits, if they are otherwise eligible, are all aged, blind or disabled residents of nursing homes, private mental hospitals, and other institutions.

9. 42 U.S.C. § 1382 e (1)(A) provides that otherwise eligible residents of public mental hospitals, between the ages of 21 and 65, shall not be eligible for benefits in any month if throughout such month the individual is a patient in a public mental hospital.

10. The named plaintiffs bring this action individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who are otherwise eligible for Supplemental Security Income pursuant to Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, as ef-

fective January 1, 1974, but are denied such assistance because they are between the ages of 21 and 65 and hospitalized in a public mental institution. The class is so numerous as to make joinder impracticable; there are questions of law and fact presented herein which are common to the entire class of persons represented by plaintiffs herein; plaintiffs' claims as hereinafter set forth are typical of the claims of all of the members of the class; and plaintiffs are qualified to, and will fairly and adequately protect the interests of each and all of the members of the class. In addition, the defendant has acted or refused to act on grounds generally applicable to the class as a whole, and final declaratory and injunctive relief with respect to the class as a whole is therefore appropriate.

11. Plaintiffs reallege and incorporate paragraphs 8 through 24 of Count I as and for paragraphs 11 through 27 of this Count.

28. No adequate justification exists for the arbitrary classification and the classification is invalid under the Fifth Amendment to the Constitution of the United States in that it denies equal protection rights embodied in the guarantee of due process of law.

29. The denial of Supplemental Security Income benefits without permitting inmates to show that their needs are not being met by the institution constitutes a violation of the due process clause of the Fifth Amendment to the United States Constitution.

30. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, pray that this Honorable Court:

1. Enter a declaratory judgment finding 42 U.S.C. 1382e(1)(A), insofar as it denies Supplemental Security Income to persons solely because they are hospitalized in public mental institutions and are between the ages of 21 and 65, violative of the Fifth Amendment of the United States Constitution.

2. Order the defendant to provide Supplemental Security Income to those who are otherwise qualified but are hospitalized in public mental institutions and between the ages of 21 and 65.

3. Order defendant to make restitution to the plaintiffs and the members of the class for monies wrongfully denied them.

4. Grant any other relief that it deems just and necessary, and grant plaintiffs their costs herein.

/s/ _____

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NO. 73 C 3070

CHARLES EDWARD WILSON, MICHAEL IRENE WELCH, individually and on behalf of all others similarly situated,
PLAINTIFFS

v.

JOEL EDELMAN, Director of the Illinois Department of Public Welfare, and CASPAR WEINBERGER, Secretary of the Department of Health, Education and Welfare,
DEFENDANTS

ANSWER TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. Defendant, Caspar Weinberger, Secretary, Department of Health, Education and Welfare, submits the following answer to the complaint filed herein.

COUNT I

1-27. Defendant has insufficient information and knowledge of all allegations as same relates to Defendant, Joel Edelman, and therefore demands strict proof of all said allegations.

COUNT II

1. Defendant denies the allegations of paragraph 1 and demands strict proof of same.

2. Defendant denies the allegations of paragraph 2.

3. Defendant denies the allegations of paragraph 3 and in further answer thereto states that the nature of the relief sought and issues involved herein do not comport with the standards of the Federal statute quoted therein.

4. Defendant has no sufficient information as to the allegations of paragraph 4 and therefore demands strict proof of same.

5. Defendant admits the allegations of paragraph 5.

6. Defendant admits the allegations of paragraph 6.

7. Defendant denies each of the allegations of paragraph 7 and in further answer thereto states that the plaintiffs lack standing to bring this action, do not represent a class, and cannot fairly and accurately represent the interests of others by this action.

8-24. Defendant has no sufficient information as to the allegations of paragraphs 8 to 24 and therefore demands strict proof of same.

25. Defendant denies the allegations of paragraph 25.

26. Defendant denies the allegations of paragraph 26.

COUNT III

1. Defendant denies the allegations of paragraph 1 and demands strict proof of same.

2. Defendant denies the allegations of paragraph 2 and states that the Federal statute quoted therein does not properly confer jurisdiction on this court in the action herein.

3. Defendant denies the allegations of paragraph 3 and in further answer incorporates by reference herein its answer in paragraph 3 of Count II.

4. Defendant has no sufficient information as to the allegations of paragraph 4 and therefore demands strict proof of same.

5. Defendant admits the allegations of paragraph 5.

6-8. Defendant admits the allegations of paragraphs 6, 7 and 8.

9. Defendant denies the allegations of paragraph 9.

10. Defendant denies the allegations of paragraph 10 and in further answer incorporates by reference its answer in paragraph 7 of Count II.

11-27. Defendant has no sufficient information as to paragraphs 11-27 and therefore demands strict proof of same.

28. Defendant denies the allegations of paragraph 28.

29-30. Defendant denies the allegations of paragraphs 29 and 30.

WHEREFORE, the Defendant herein prays that this action be dismissed and taken for naught.

/s/
JAMES R. THOMPSON
United States Attorney
Northern District of Illinois
Eastern Division
219 South Dearborn Street
Room 1500
Chicago, Illinois 60604

AFFIDAVIT OF MAILING

STATE OF ILLINOIS

SS

COUNTY OF COOK

_____ being first duly sworn on oath, deposes and says that he is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the ____ day of 2nd May, ____ 1974, he placed a copy of the

GOVERNMENT'S ANSWER TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

in a Government franked envelope addressed to each of the following named individuals, and deposited each envelope in the United States mail chute, located in the United States Courthouse, Chicago, Illinois, on said date at the hour of about 2:00 p.m.

THOMAS GRIPPANDO
Legal Assistance Foundation of Chicago
64 East Jackson Boulevard
Chicago, Illinois 60604

BILL WENTZEL
Attorney General
160 North La Salle Street
Room 837
Chicago, Illinois

_____

SUBSCRIBED AND SWORN TO before me
this 2nd day of May, 1974

_____

NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NO. 73 C 3070

CHARLES EDWARD WILSON, et al., individually and on behalf of all others similarly situated, PLAINTIFFS,

v.

JOEL EDELMAN, Director of the Illinois Department of Public Aid, and CASPAR WEINBERGER, Secretary of the Department of Health, Education and Welfare, DEFENDANTS.

MOTIÓN FOR LEAVE TO PROCEED AS A CLASS AND FOR SUMMARY JUDGMENT

Plaintiffs, by their attorneys, respectfully move this court pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure for leave to proceed as a class.

Plaintiffs further respectfully move, pursuant to Rule 56 (a) and (c) of the Federal Rules of Civil Procedure, for summary judgment. Based on the pleadings, and on the affidavits attached to the accompanying Memorandum in Support of Plaintiffs' Motions for Summary Judgment and Declaration of Class Action and in Opposition to Defendant Edelman's Motion to Dismiss, plaintiffs submit that there is no genuine issue as to material fact and that plaintiffs are entitled to judgment as a matter of law.

One of the Attorneys for Plaintiffs

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JANE G. STEVENS (of counsel)
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922-5625

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NO. 75 C 3070

CHARLES EDWARD WILSON, et al., individually and on behalf of all others similarly situated, PLAINTIFFS,

v.

JOSEPH CALIFANO, Secretary of the Department of Health, Education and Welfare, DEFENDANT.

MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by their attorneys, respectfully renew their motion, pursuant to Rule 56(a) and (c) of the Federal Rules of Civil Procedure, for summary judgment. Based on the pleadings, and the affidavits previously filed, plaintiffs submit that there is no genuine issue as to material fact and that plaintiffs are entitled to judgment as a matter of law on Count III of the Amended Complaint. Plaintiff and members of the plaintiff class are entitled as a matter of law to have the decisions which have denied them benefits under Title XVI of the Social Security Act reversed with directions that they be paid benefits to the date of what would have been their original entitlement, but for the unconstitutional exclusion effected by 42 U.S.C. § 1382a(e)(1).

/s/ _____
One of the Attorneys for Plaintiff

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341-1070

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NO. 75 C 3070

CHARLES EDWARD WILSON, et al., individually and on behalf of all others similarly situated, PLAINTIFFS,

v.

JOSEPH CALIFANO, Secretary of the Department of Health, Education and Welfare, DEFENDANT.

MOTION FOR CERTIFICATION OF CLASS

Plaintiffs, by their attorneys, hereby move pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order that this proceeding be maintained as a class action on behalf of a class of: all persons residing in HEW Region V who have been terminated from benefits under Title XVI, or who have applied for Supplemental Security Income Benefits under Title XVI and been denied such benefits, on or after January 1, 1974, solely because they are between the ages of 21 and 65 and hospitalized in a public mental institution and therefore have been terminated or denied based solely on the provisions of 42 U.S.C. § 1382a(e)(1).

One of the
Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT AOF ILLINOIS
EASTERN DIVISION

NO. 73 C 3070

CHARLES EDWARD WILSON, ET AL., individually and on behalf of all others similarly situated, PLAINTIFFS,

v.

JOEL EDELMAN, Director of the Illinois Department of Public Aid, and CASPAR WEINBERGER, Secretary of the Department of Health, Education, and Welfare, DEFENDANTS.

MOTION OF DEFENDANT, CASPAR WEINBERGER, TO DISMISS THE COMPLAINT; OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Now comes defendant, Caspar Weinberger, Secretary of Health, Education and Welfare, by his attorney, JAMES R. THOMPSON, United States Attorney for the Northern District of Illinois and moves this Court as follows:

1. To dismiss the complaint for lack of jurisdiction pursuant to Rule 12(b) of the Federal Rules of Civil Procedure; or, in the alternative,

2. To enter summary judgment for defendants pursuant to Rule 56(b) of the Federal Rules of Civil Procedures.

JAMES R. THOMPSON
United States Attorney

Supreme Court of the United States

NO. 79-1380

PATRICIA R. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES

APPELLANT,

v.

CHARLES EDWARD WILSON, ET AL.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

May 27, 1980

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